

29 January 1997

Re: NEPA Call-In Technical Inquiry 0007A - Blanket Floodplain Waiver

Dear NEPA Call-In User:

NEPA Call-In contacted GSA Region 4, Environmental Officer, to obtain information on GSA blanket floodplain waivers. The Environmental Officer provided NEPA Call-In a copy of a floodplain waiver "Document of Determination" utilized by GSA Region 4. The "Document of Determination" states it was prepared in accordance with the 1985 GSA memo, "Floodplain Waivers: Proper Documentation and Processing Procedures and GSA Policy on Blanket Waivers." The Environmental Officer stated the memo was originally approved by FEMA but expired in 1992 and was not renewed by FEMA. Therefore, blanket floodplain waivers can no longer be used by GSA.

The Environmental Officer stated Region 4 is reviewing projects on an individual basis to determine if they meet the criteria set out in Executive Order 11988, "Floodplain Management". The criteria are listed in Section 2(a)(2) and Section 3 of the Executive Order. GSA ADM 1095.2, "Consideration of floodplains and wetlands in decisionmaking", contains GSA procedures for actions which impact a floodplain. Of particular relevance is Chapter 2, "Implementing the Flood Plains and Wetlands Orders."

NEPA Call-In reviewed Executive Order 11988, "Floodplain Management" which directs agencies to consider alternatives to avoid adverse effects and incompatible development in floodplains. We also reviewed "Further Advice on Executive Order 11988 Floodplain Management," the interagency document issued by FEMA. This document contains procedures for obtaining a "general (area) review" and a "class review," which contains provisions similar to a "blanket floodplain waiver."

NEPA Call-In contacted a program specialist in FEMA's Mitigation Directorate regarding FEMA procedures on floodplain waivers. NEPA Call-In was told that FEMA's responsibility regarding actions being taken by other Federal agencies under Executive Order 11988, "Floodplain Management," is one of consultation. Their role is largely guidance and assistance to Federal agencies in implementing the activities under EO 11988. FEMA has no oversight or regulatory authority over other Federal agencies. It is GSA's responsibility to implement the provisions of EO 11988.

Regarding the availability of "blanket floodplain waivers," the FEMA representative stated they cannot be used by GSA since they are in violation of EO 11988. There is no basis in EO 11988 for granting a blanket floodplain waiver for any action associated with the potential to result in: (a) long or short term adverse impacts associated with the occupancy or modification of floodplains, or (b) direct or indirect support of floodplain development. EO 11988 applies to any Federal action including acquiring, managing, and disposing of Federal lands and facilities; providing Federally undertaken financed, or assisted construction and improvements; and conducting Federal activities affecting land use, such as planning, regulating, or licensing activities. Application of the Order also applies to Federal actions in areas which may be entirely in a floodplain, such as a community, county, region, or territory entirely located in the floodplain. There are no special exemptions under the EO for this situation.

NEPA Call-In also obtained additional information on when a "general (area) review" and a "class review" as described in "Further Advice on EO 11988, Floodplain management" could be used by GSA. The concepts "general or area review" and "class review" do not provide for blanket waivers from EO 11988 or from any other applicable Federal, State or local code or regulation pertaining to floodplains. A general or area-wide review may be substituted for individual compliance with EO 11988 when a series of individual actions is proposed or contemplated over an indefinite time period, such as the construction of a multi-building campus. The general or area wide compliance process shall comply with the full decision-making process for avoiding floodplain locations.

A class review can be done for certain routine or repetitive actions. A class review is limited to actions for which there is no practicable alternative to siting in a floodplain. Examples of qualifying activities are private and public water-use facilities, fences, public access structures (e.g., picnic tables, benches, grills etc.), and small buildings with less than 25 square feet of floor space used for storage of water-use related equipment. Compliance with EO 11988 must be maintained to ensure the activities for which a class review is being undertaken would not have an adverse impact on floodplain values or place property and persons at risk. NEPA Call-In emphasizes actions involving either a "general (area) review" or a "class review" must be coordinated with the local government.

In summary, blanket floodplain waivers for GSA activities in an area which is nearly all floodplain can no longer be used by GSA since they are in violation of EO 11988. Procedures for floodplain "general (area) reviews" and "class reviews" are only applicable in very limited situations as outlined above. Typically, an evaluation of an action which will impact a floodplain must be completed following the requirements outlined in GSA ADM 1095.2 and EO 11988.

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Sincerely,

(Original Signed)

NEPA Call-In Researcher